BILL NO. 107

Government Bill

1st Session, 60th General Assembly
Nova Scotia
55 Elizabeth II, 2006

An Act Respecting Midwifery

CHAPTER 18
ACTS OF 2006

AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 23, 2006

The Honourable Chris A. d'Entremont
Minister of Health

Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly

An Act Respecting Midwifery

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Midwifery Act*.

2 In this Act,

(a) "active-practising licence" means a licence to practise midwifery issued to a person who meets the criteria for entry in the active-practising roster as set out in the regulations;

(b) "Association" means the Association as defined in the regulations;

(c) "complaint" means a notice in writing pursuant to this Act, indicating possible professional misconduct, conduct unbecoming the profession or incompetence of a member;

(d) "Council" means the Midwifery Regulatory Council of Nova Scotia;

(e) "hearing panel" means the hearing panel established pursuant to this Act;

(f) "incompetence" means the display of lack of knowledge, skill or judgement in the member's care of a client or delivery of midwifery services that, having regard to all the circumstances, rendered the respondent unsafe to practise at the time of such care of the client or delivery of midwifery services or that renders the member unsafe to continue in practice without remedial assistance;

(g) "member" means a person whose name is recorded in the Register;

(h) "midwife" means a person whose name appears on the Register and who has an active-practising licence;

(i) "practice of midwifery" means

(i) the assessment and monitoring of the health of a mother and her baby during pregnancy, labour and the post-partum period,

(ii) the provision of care in the normal course of pregnancy, labour and the post-partum period,

(iii) the management of vaginal deliveries,

(iv) the ordering and interpreting of screening and diagnostic tests and the recommending, prescribing or re-ordering of drugs restricted to actual delivery and care, blood products and related paraphernalia respecting the provision of care in the normal course of pregnancy, labour and the post-partum period, and

(v) invasive procedures restricted to actual delivery and care, as prescribed by regulation,

either within or outside of a hospital setting and research, education, consultation, management, administration, regulation, policy or system development relating to subclauses (i) to (v);

(j) "professional misconduct" means such conduct, attitude or acts relevant to the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and, without limiting the generality of the foregoing, includes

(i) failing to maintain the standards of midwifery practice,

(ii) failing to uphold the code of ethics adopted by the Council,

(iii) abusing a person verbally, physically, emotionally or sexually,

(iv) misappropriating personal property, drugs or other property belonging to a client or a member's employer,

(v) inappropriately influencing a client to make or change a will or power of attorney,

(vi) wrongfully abandoning a client,

(vii) neglecting to provide care to a client,

(viii) failing to exercise discretion in respect of the disclosure of confidential information,

(ix) falsifying records,

(x) inappropriately using professional midwifery status for personal gain,

(xi) promoting for personal gain any drug, device, treatment, procedure, product or service that is unnecessary, ineffective or unsafe,

(xii) publishing, or causing to be published, any advertisement that is false, fraudulent, deceptive or misleading,

(xiii) engaging or assisting in fraud, misrepresentation, deception or concealment of a material fact when applying for or securing registration or a licence to practise midwifery or taking any examination provided for in this Act, including using fraudulently procured credentials, or

(xiv) taking or using the designation "registered midwife", "midwife", or any derivation or abbreviation thereof, or describing the person's activities as "midwifery" in any advertisement or publication, including business cards, websites or signage, unless the referenced activity falls within the definition of the "practice of midwifery";

(k) "Register" means the Midwifery Register established pursuant to this Act;

(l) "Registrar" means the Registrar appointed by the Council;

(m) "Registration Appeal Committee" means the Registration Appeal Committee established pursuant to this Act;

(n) "roster" means the record of the class of licensing established pursuant to this Act or the regulations;

(o) "standards of midwifery practice" means the minimal professional practice expectations for a midwife in any setting or role approved by Council or otherwise inherent in the practice of midwifery.

MIDWIFERY REGULATORY COUNCIL

3 (1) The Midwifery Regulatory Council of Nova Scotia is hereby constituted as a body corporate and, subject to this Act, has the capacity, rights, powers and privileges of a natural person.

(2) The Council has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued.

4 (1) The Council consists of the following persons, appointed by the Governor in Council:

(a) three persons recommended by the Association who are registered or eligible to be registered in a province of Canada as a midwife;

(b) a registered nurse recommended by the College of Registered Nurses of Nova Scotia;

(c) a physician recommended by the College of Physicians and Surgeons; and

(d) up to three members of the public who are not members of a health profession and who have shown an interest in serving on the Council.

(2) The members of the Council shall receive such remuneration and allowances as may be determined by the Governor in Council.

(3) The members of the Council shall be paid such reasonable expenses incurred by them in the performance of their duties as are determined by the Governor in Council.

5 (1) Subject to subsection (2), a majority of the members of the Council constitute a quorum.

(2) The majority referred to in subsection (1) must consist of at least one person appointed pursuant to clause 4(1)(a) and at least one person appointed pursuant to clause 4(1)(d).

6 (1) Each member of the Council holds office for a term, not exceeding three years, prescribed in the member's appointment, unless the Governor in Council revokes the member's appointment sooner, and is eligible for re-appointment to the Council.

(2) Notwithstanding subsection (1), members of the Council continue to hold office until their successors are appointed or until such time as they are re-appointed.

(3) The Governor in Council may appoint persons to fill vacancies occurring from time to time on the Council.

(4) A vacancy on the Council does not impair the right of the remaining members to act.

7 (1) The Council shall

(a) regulate the practice of midwifery in accordance with the registration, licensing and professional conduct processes set out in this Act and the regulations;

(b) establish, maintain and promote standards of midwifery practice and consult with the College of Physicians and Surgeons of Nova Scotia, Doctors Nova Scotia and the College of Registered Nurses of Nova Scotia on these standards;

(c) approve and promote a code of ethics; and

(d) perform such other duties and exercise such other powers as are imposed or conferred on the Council by or under any Act or regulations.

(2) In addition to any other power conferred by this or any other Act, the Council may do such things as it considers appropriate to perform its duties under this Act and the regulations and, without limiting the generality of the foregoing, may

(a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;

(b) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;

(c) engage such agents and employees as it, from time to time, deems expedient;

(d) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the Council; or

(e) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (d).

8 The Council may make by-laws

(a) providing for the holding of meetings of the Council or committees of the Council and the conduct of such meetings;

(b) fixing the time and place for regular meetings of Council, determining by whom meetings may be called, regulating the conduct of meetings, providing for emergency meetings and regulating the notice required in respect of meetings;

(c) providing for the appointment of such committees as the Council deems expedient;

(d) respecting the composition, powers and duties of such committees as may be appointed by the Council and providing for the holding and conduct of meetings of such committees;

(e) prescribing fees payable pursuant to this Act by applicants and members and, where the Council deems it advisable, prescribing different fees for different classes of applicants and members;

(f) prescribing forms and providing for their use;

(g) prescribing the criteria to be met for candidates recommended to the Governor in Council for appointment to the Council;

(h) respecting the powers, duties and qualifications of the officers, agents and employees of the Council;

(i) approving a code of ethics and the standards of midwifery practice;

(j) respecting all other things necessary for the administration of the affairs of the Council.

9 (1) Subject to the approval of the Governor in Council, the Council may make regulations

(a) regulating the registration, licensing, discipline and re-instatement of members;

(b) respecting a continuing competency program and requiring members to participate in any such program and providing for any other matter that will facilitate or give effect to such program;

(c) respecting the verification of members' compliance with the continuing competence program;

(d) respecting the limitation of the duration of a licence to practise for non-compliance with the continuing competence program;

(e) respecting the information to be included on the Register;

(f) respecting the revocation or suspension of licences issued pursuant to this Act and the re-instatement of such licences and allowing for conditions, limitations or restrictions to be attached to a re-instated licence;

(g) creating one or more classes and rosters of licensing, including a provisional licence, and prescribing the rights, privileges, qualifications and obligations of the member of each class and prescribing the conditions for the entry and maintenance of members' names in each roster;

(h) respecting the limiting or qualifying of a member's licence including, but not limited to, procedures and interventions;

(i) respecting the type of professional liability insurance or other form of malpractice coverage a member must hold;

(j) determining the procedure to be followed at hearings by a hearing panel;

(k) respecting the powers, duties and qualifications of the Registrar;

(l) regulating, controlling or prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practice;

(m) allowing for an award of costs on a solicitor-client or other basis;

(n) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, file a document or do any other act by a specified or ascertainable date and providing for the re-instatement of a licence so suspended upon payment of such fee as determined by the Council;

(o) prescribing the powers and functions of committees and the processes and procedures to be utilized by committees;

(p) respecting the recognition of midwifery schools and examinations as prerequisites to registration and licensing;

(q) respecting the assessment process required for registration as registered midwives;

(r) respecting any quality assurance programs required;

(s) respecting the criteria for supervised practice;

(t) respecting the remuneration, allowances and expenses for members of the Council;

(u) respecting the prescribing of drugs restricted to actual delivery and care by a midwife;

(v) respecting invasive procedures that a member may perform and any conditions or restrictions on the performance of those procedures;

(w) defining any word or expression used but not defined in this Act;

(x) further defining any word or expression defined in this Act;

(y) governing such other matters as the Council considers necessary or advisable for the effective discharge of its functions or the exercise of its powers.

(2) The exercise by the Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

10 The Council shall appoint annually from its members a Chair and a Vice-chair.

11 The Council shall meet quarterly or more frequently when deemed necessary by the Council.

12 The Council may appoint such committees as the Council considers necessary to assist it in carrying out its duties pursuant to this Act.

13 The Council shall submit an annual report to the Minister of Health containing the information prescribed by the Minister.

REGISTRATION AND LICENSING

14 (1) A Registrar shall be appointed by the Council who holds office at the pleasure of the Council, at such salary or other remuneration as determined by the Minister of Health.

(2) Subject to subsection (4), the Registrar shall perform all of the duties assigned to the Registrar under this Act and the regulations.

(3) The Council may appoint such other officers, agents and employees at such salary or other remuneration as determined by the Minister of Health and for such term of office as the Council considers necessary to assist the Council in carrying out its duties pursuant to this Act.

(4) The Registrar may delegate any functions assigned to the Registrar by this Act or the regulations.

15 Subject to the requirements for registration set out in the regulations, an applicant who provides the Registrar with such evidence as may be required to establish that the applicant

(a) holds a baccalaureate degree from a Canadian university midwifery education program; or

(b) has educational qualifications equivalent to the degree referred to in clause (a),

is entitled to become a registrant of the College and to have the applicant's name entered in the Register in the appropriate class.

16 (1) The Registrar shall cause to be kept a Midwifery Register in which the names of those persons who qualify for registration according to this Act and the regulations are recorded.

(2) The Register shall include such other information as may be required by the regulations.

(3) The classes of licences recorded in the Register shall be as set out in the regulations.

(4) The Council shall cause to be maintained separate rosters for each class of licence as provided by the regulations.

(5) The Registrar shall also cause to be kept a record available to the public showing

(a) the name and registration number of every person authorized to engage in the practice of midwifery;

(b) any conditions or restrictions on such person's licence, if the Council determines it is in the public interest to have such conditions or restrictions available to the public; and

(c) any licensing sanctions imposed on a member that are not otherwise subject to a publication ban.

(6) Any person may inspect the Register at all reasonable times during normal business hours at the head office of the Council.

17 The Registrar shall issue a licence to a person who meets the criteria for entry as set out in this Act and the regulations and register the person in the Register.

18 Where the Registrar is not satisfied that an applicant meets the requirements for registration set out in this Act and the regulations, the Registrar shall refuse to register the applicant and shall notify the applicant in writing of the decision.

19 (1) The Council shall appoint a Registration Appeal Committee, the membership of which may be determined by the Council from time to time.

(2) The Registration Appeal Committee shall perform the functions and duties set out in this Act, the regulations and the by-laws.

(3) An applicant who is refused registration under this Act may, by written notice, appeal that decision to the Registration Appeal Committee within thirty days of receipt of such refusal.

(4) An appeal before the Registration Appeal Committee shall be conducted in the manner and follow the procedure set out in the regulations.

(5) The decision of the Registration Appeal Committee is final.

(6) Each person on the Registration Appeal Committee has all the rights, powers, duties and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*.

20 (1) Notwithstanding anything contained in this Act, where any person has been convicted or found to be guilty, by a court in or outside of Canada, of any offence that is inconsistent with the proper professional behaviour of a midwife, including a conviction under the *Criminal Code* (Canada) or the *Controlled Drug and Substances Act* (Canada), and such person applies for registration under this Act, the Council and the Registrar may refuse to register such person, but the Council may, at any time, permit such person to be registered or to remain registered upon such terms and conditions as the Council directs.

(2) Upon application for registration or a licence, an applicant shall advise the Registrar, in writing, of any convictions referred to in subsection (1).

21 Unless otherwise suspended, revoked or amended, a licence to practise midwifery remains in effect until the expiration of the year in which it was issued.

22 (1) The Registrar shall renew a licence to practise midwifery if the person who holds the licence applies for renewal, pays the applicable fee as established by the by-laws and meets the requirements for renewal of a licence as prescribed in the regulations.

(2) The licence of any member who fails to pay prescribed annual fees as required by subsection (1) or who fails to comply within the prescribed period with any continuing competence requirements established in regulations shall be suspended in accordance with the procedure prescribed by the regulations.

(3) The Registrar shall forthwith notify, in writing, any person whose licence has been suspended pursuant to this Section.

23 (1) Where the licence of a member has been suspended pursuant to subsection 21(2), where there has been non-compliance with continuing-competency requirements or in any other case where the licence of a member has expired or lapsed pursuant to this Act for non-payment of fees, the person may apply to the Registrar for re-licensing.

(2) Where a person referred to in subsection (1) satisfies the Registrar

(a) of the person's intention to practise midwifery in the Province;

(b) as to the person's activities since the date of the suspension or expiry or lapsing of the person's licence;

(c) that the person has maintained and possesses an appropriate level of skill and knowledge in midwifery;

(d) as to the person's good standing in all jurisdictions in which the person has practised midwifery since the date of the suspension or expiry or lapsing of the person's licence;

(e) that the person has paid all fees or any other amount owing to the Council and such administrative fees as may be prescribed; and

(f) that the person has complied with continuing-competency requirements,

the Registrar may issue a licence to the person.

(3) Where the Registrar is not satisfied with the evidence presented pursuant to subsection (2), the Registrar

(a) may; or

(b) where the applicant so requests in writing, shall,

refer the matter to the Council.

(4) Upon a referral pursuant to subsection (3), the Council, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Council sees fit, and the Council shall consider the application in accordance with this Act.

(5) Where the person requests the opportunity to appear before the Council, this request shall be granted and the person may appear with legal counsel.

(6) After hearing the applicant and the Registrar, the Council may

(a) direct the Registrar to issue a licence to the applicant;

(b) direct the Registrar to issue a licence to the applicant subject to such conditions, limitations or restrictions as the Council considers appropriate;

(c) adjourn further consideration of the application pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Council may designate; or

(d) direct the Registrar to refuse the application if the Council is not satisfied that the applicant meets the criteria set out in subsection (2).

24 Every licence issued pursuant to Section 23 is subject to any conditions, limitations or restrictions contained in the licence that had expired, lapsed or been suspended pursuant to subsection 22(2), unless the Council orders otherwise.

25 Subject to the regulations, no person shall take or use the designation "Registered Midwife", "midwife" or a variation or equivalent in another language of the title in the Province, either alone or in combination with other words, letters or descriptions to imply that the person is

entitled to practise as a midwife in the Province unless the person is a holder of an active-practising licence with or without conditions or restrictions.

PRACTICE OF MIDWIFERY

26 (1) Subject to subsection (2), no person shall engage in the practice of midwifery unless such practice is consistent with

(a) the midwife's individual scope of practice; and

(b) the standards of midwifery practice.

(2) Unless otherwise authorized by this Act or the regulations, or any other law, no midwife shall practise outside the scope of the practice of midwifery.

(3) No person shall engage in the practice of midwifery in the Province unless

(a) that person's name is entered in the Register and that person is the holder of a licence, with or without conditions or restrictions; or

(b) that person is a student enrolled in an approved midwifery education program and is authorized by the administrators of the program to engage in the practice of midwifery.

27 Where the right of a person to practise as a midwife has been limited by the imposition of conditions or restrictions pursuant to this Act or the regulations, particulars of all conditions or restrictions imposed on that person shall be noted in the Register and on the member's licence during any time when such conditions or restrictions apply.

28 The Registrar shall annotate the Register if

(a) a person's name has been incorrectly entered;

(b) notification is received of a member's death;

(c) the registration of a member has been revoked;

(d) the Registrar, as part of an informal resolution of a complaint, or the hearing panel authorizes the resignation of a member from the Register; or

(e) a member has requested in writing and the Registrar, as part of an informal resolution of a complaint or otherwise, has approved the resignation of the member,

and a person referred to in clauses (b) to (e) ceases to be a member of the College.

29 (1) The Council shall cause the removal of the name of a member from the Register

(a) if the member no longer meets the criteria for entry on the relevant roster;

(b) at the request of the member, upon surrendering any licence held by the member;

(c) if the member's name has been incorrectly entered;

(d) if notification is received of the member's death;

(e) for non-payment of fees or other assessments levied under this Act or the regulations;

(f) if the member has been suspended, for the term of the suspension;

(g) if the registration of the member has been revoked; or

(h) if a hearing panel or the Council authorizes the removal of the member from the Register.

(2) The name of a person removed from the appropriate roster pursuant to clauses (1)(a) to (f) shall be restored upon

(a) payment of the prescribed fee; and

(b) compliance by the person with this Act and the regulations.

(3) The name of a person removed from the appropriate roster pursuant to clauses 28(d) or (e) or (1)(h) shall only be restored if

(a) the hearing panel or the Registrar authorizing the resignation of the member permits the member to re-apply for membership; and

(b) the Council determines, on such conditions or with such restrictions as the Council directs, that the registration or licence be re-instated.

(4) Where a midwife has been suspended, the Registrar shall re-instate the person in the Register if

(a) the suspension is for a stated period, on the expiry of that period; or

(b) terms and conditions for re-instatement were set by a hearing panel, when the terms and conditions have been met.

30 (1) Every member who is engaged in the practice of midwifery must hold a current licence to practice midwifery with or without conditions or restrictions.

(2) Every person, other than a client, who employs a person in the practice of midwifery and every agency or registry that procures employment for a person in the practice of midwifery shall

(a) ensure that the person, at the time of employment and each year employed thereafter, holds a current licence to practise midwifery; and

(b) where the person's employment is terminated or the person resigns because of allegations of professional misconduct, conduct unbecoming the profession or incompetence, report the matter to the Council forthwith and provide a copy of the report to the person whose employment is terminated.

31 A midwife shall

(a) identify conditions in a mother and her baby that necessitate consultation or referral to a physician or other health care professional, in accordance with standards approved by the Council;

(b) consult with a physician regarding any deviations from the normal course of pregnancy, labour, delivery and the post-partum period, in accordance with standards approved by the Council;

(c) transfer primary responsibility for care if the consultation under clause (b) determines that management by a physician is required, in accordance with the standards approved by the Council; and

(d) continue to provide midwifery care in collaboration with a physician when primary responsibility for care is transferred under clause (c), to the extent that is agreed to by the physician, the midwife and the mother.

32 (1) A midwife who was engaged in the practice of midwifery in the Province and who was subject to any disciplinary findings while engaged in the practice of midwifery outside the Province or has outstanding complaints from outside the Province shall not engage in the practice of midwifery on the member's return to the Province before providing the Council with notice of such disciplinary findings or complaints and receiving notice from the Council that the member is authorized to resume the practice of midwifery in the Province.

(2) Where the Council receives notice pursuant to subsection (1), the Council may require the member to attend a hearing which must be conducted in accordance with subsection 37(2).

PROFESSIONAL CONDUCT

33 Complaints may be initiated by

(a) any official body corporate or association; or

(b) any other person.

34 The Council or a hearing panel may employ, at the expense of the Council, such legal or other assistance as it considers necessary for the purpose of the investigation of any disciplinary matter.

35 Every person involved in the administration of this Act and any member of the Council, or a committee of the Council, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding clients, except

(a) in connection with the administration of Sections 36 to 55 and the regulations or proceedings thereunder;

(b) to one's own legal counsel;

(c) as otherwise required by law; or

(d) with the consent of the person to whom the information relates.

36 The Registrar, the hearing panel or a person investigating a disciplinary matter concerning a member may investigate any other disciplinary matter concerning the member that arises in the course of the investigation.

37 **(1)** Where the Registrar or hearing panel

(a) learns that the registration or licence of a member has been suspended or revoked for reasons of professional misconduct, conduct unbecoming or incompetence by another licensing or regulatory authority;

(b) has provided the member with such notice as it may prescribe of a hearing together with a copy of the relevant decision of the other licensing or regulatory authority; and

(c) has heard such evidence as is offered by the member, if any, at the hearing as to why the member should not be subject to disciplinary action,

the Registrar or hearing panel may take any of the actions contemplated by clause 52(2)(e).

(2) Where a member has been convicted of an offence pursuant to the *Criminal Code* (Canada) or the *Controlled Drug and Substances Act* (Canada), the Registrar or hearing panel may, by such notice as it prescribes, require the member to attend a hearing to establish why the member should not be subject to disciplinary action.

(3) For the purpose of subsection (2), a certificate of conviction of a member is conclusive evidence that a person has committed the offence stated therein unless it is shown by the member that the conviction has been quashed or set aside.

(4) When a Registrar or hearing panel is conducting a hearing pursuant to this Section, it may, if it deems it proper, take any of the actions contemplated by clause 52(2)(e).

38 **(1)** The Registrar shall

(a) investigate complaints regarding a disciplinary matter concerning any member;

(b) investigate any matter referred by the Council; and

(c) perform such other duties as may be assigned by the Council.

(2) The Registrar may investigate a matter notwithstanding that a written complaint has not been filed with the Registrar.

(3) Without receipt of a written complaint, the Registrar may

(a) do all things necessary to provide a full and proper investigation; or

(b) appoint a person or persons to conduct an investigation or practice audit,

or both.

(4) Upon receipt of a written complaint and upon giving to the member a copy of the complaint, the Registrar may require the member to do any or all of the following:

(a) submit to physical or mental examinations by such qualified persons as the Registrar designates;

(b) submit to an inspection or audit of the practice of the member by such qualified persons as the Registrar designates;

(c) submit to such examinations as the Registrar directs to determine whether the member is competent to practise midwifery;

(d) produce records and accounts kept with respect to the member's practice.

(5) Where the member fails to comply with subsection (4), the Registrar may suspend or restrict the registration or licence of the member until the member complies.

(6) Where the Registrar has, pursuant to clause (4)(a), (b) or (c), required a member to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the Registrar, the Registrar shall deliver to the member any report it receives from the designated qualified person.

(7) The committee or person appointed to conduct an investigation pursuant to clause (3)(b) may

(a) employ such experts as the committee or person deems necessary;

(b) require the member, or any other member who may have information relevant to the investigation, to attend before the committee or the person conducting the investigation to be interviewed; and

(c) investigate any other matter relevant to the conduct, capacity or fitness of a member to practise midwifery that arises in the course of the investigation.

(8) The Registrar may

(a) dismiss the complaint;

(b) attempt to resolve the matter informally;

(c) with the consent of both parties, refer the matter, in whole or in part, for mediation;

(d) refer the matter, in whole or in part, to a hearing panel;

(e) counsel the member;

(f) caution the member;

(g) counsel and caution the member;

(h) reprimand the member with the member's consent; or

(i) with the consent of the member, require the member to undergo such treatment or re-education as the Registrar considers necessary.

(9) Where the Registrar is considering a decision to counsel, caution or counsel and caution a member pursuant to clause (8)(e), (f) or (g), the Registrar shall give notice to the member and the member shall be given the opportunity to appear, with or without legal counsel, before the Registrar prior to the Registrar making a decision.

(10) A member who has consented to a requirement for treatment or re-education pursuant to clause (8)(i) may consent to such requirement in principle, while reserving the right to appeal the actual content of the requirement for treatment or re-education to a hearing panel within fifteen days of receiving notice thereof.

(11) Parties to an appeal pursuant to subsection (10) shall bear their own costs.

(12) An appeal pursuant to subsection (10) shall be conducted without oral testimony and a hearing panel shall review an agreed statement of facts supplied by the legal counsel for the Council and signed by the member.

(13) Where an agreed statement of facts is not filed within thirty days of filing the notice of appeal, the consent of the member is deemed to have been withdrawn and the matter referred back to the Registrar who may consider other actions or dispositions as authorized by this Act.

(14) When making a disposition pursuant to clause (8)(e), (f), (g), (h) or (i), the Registrar may make any combination of the dispositions that are set out in those clauses or the Registrar may make such other dispositions as the Registrar considers appropriate, in accordance with the objects of this Act.

(15) The member and the complainant shall be advised, in writing, of the disposition of the Registrar.

39 **(1)** Notwithstanding anything contained in this Act, where

(a) the Registrar receives reliable information that indicates that a member may be incompetent or guilty of professional misconduct or conduct unbecoming; and

(b) the Registrar concludes that it is in the public interest to suspend from practice or restrict the practice of the member,

the Registrar may, without a hearing,

(c) immediately suspend the registration or licence of the member on a temporary basis; or

(d) immediately impose restrictions on the registration or licence of the member on a temporary basis.

(2) The member must receive, forthwith, notice in writing, with reasons, of a decision made pursuant to subsection (1).

(3) Subject to a determination pursuant to subsection (5), a decision pursuant to subsection (1) continues in force until final resolution by a hearing panel which must occur without undue delay.

(4) A member who receives written notice pursuant to subsection (2) may request, in writing, an opportunity to meet with the Registrar.

(5) Where a request is received pursuant to subsection (4), the Registrar

(a) shall provide an opportunity for the member to meet with the Registrar within ten days of the written request; and

(b) after meeting with the member, may confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1).

40 Notwithstanding anything contained in this Act, where a decision is made pursuant to subsection 39(1), subject to any disposition made pursuant to subsection 39(5), a hearing panel shall be appointed pursuant to subsection 44(1) to proceed with a hearing to determine whether the member is guilty of charges relating to a disciplinary matter.

41 Notwithstanding that members of a hearing panel have ceased to hold office by reason of the lapse of their appointments, such members are seized with the jurisdiction to complete any matter the panel has commenced if necessary to retain a quorum and, for this purpose, such members continue to have the same powers, privileges, immunities and duties as are provided by this Act and the regulations.

42 (1) After the Registrar refers a matter to a hearing panel pursuant to clause 38(8)(d), the member complained of may, at any time before the commencement of the hearing, tender to the Registrar a proposed settlement agreement, in writing, consented to by legal counsel for the Council that includes an admission of a disciplinary matter violation or violations and the member's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing panel.

(2) The Registrar may, in the Registrar's discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement by the hearing panel.

(3) Where the Registrar recommends the acceptance of the proposed settlement agreement, the Registrar shall instruct legal counsel for the Council to advise the hearing panel of the recommendation.

(4) Where the Registrar refuses to recommend the proposed settlement agreement, the hearing shall proceed without reference to the proposed settlement agreement.

(5) Where the hearing panel appointed to hear the complaint accepts the recommendation of the Registrar, it shall confirm such acceptance by written decision that incorporates the settlement agreement.

(6) Where the hearing panel appointed to hear the complaint rejects the recommendation of the Registrar,

(a) the hearing panel shall advise the Council of its decision;

(b) the hearing panel shall proceed no further with the hearing of the complaint;

(c) a new hearing panel shall be appointed to hear the complaint and no member of the hearing panel that considered the proposed settlement agreement shall be a member of the new hearing panel; and

(d) the Registrar retains jurisdiction over the complaint until the commencement of the hearing by a hearing panel.

43 The Registrar may investigate the activities of a non-member but the Registrar has no compulsory powers in relation to the investigation of the non-member, except that the Registrar

may require a member who may have information relevant to the investigation to attend before the committee or the person conducting the investigation to be interviewed.

44 **(1)** A hearing panel shall be appointed for the purpose of hearing any charges relating to a disciplinary matter against a member when a disciplinary matter is referred, in whole or in part, to a hearing panel.

(2) The hearing panel shall be composed of at least three persons of whom one member shall be appointed by the Council as the chair.

(3) The hearing panel must have as members

(a) at least one person appointed pursuant to clause 4(1)(a);

(b) at least one person appointed pursuant to clauses 4(1)(b) or (c); and

(c) at least one person appointed pursuant to clause 4(1)(d).

(4) Notwithstanding subsection (3), two members of the hearing panel constitute a quorum, one of whom must be a person appointed pursuant to clause 4(1)(a).

(5) Subject to the regulations, the hearing panel may do all things necessary to provide a full and proper inquiry.

(6) In a matter over which a hearing panel has jurisdiction, the hearing panel and each member of the hearing panel has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(7) Upon the application of

(a) any party to the hearing;

(b) the chair of the hearing panel; or

(c) legal counsel for the Council or the hearing panel,

the Registrar shall sign and issue a summons to witness for the purpose of procuring the attendance and evidence of witnesses before the hearing panel.

(8) It is the duty of the member who is charged in a disciplinary matter to appear at the hearing, but in the event of non-attendance by such member, the hearing panel, upon proof by affidavit, statutory declaration or other evidence acceptable to the hearing panel of service of the notice pursuant to subsection (9), may proceed with the hearing and, without further notice to the member, render its decision and take such other action as it is authorized to take pursuant to this Act.

(9) Unless the member has agreed to a shorter notice period, a notice of hearing must be served at least thirty days before the holding of the hearing upon the member whose disciplinary matter is being heard.

(10) A notice of a hearing must state the details of the charges and the time and place of the holding of the hearing and must be signed by the Registrar.

(11) The Council shall place the notice as provided for in subsection (10) in such publications as it deems necessary in order to inform the public.

45 (1) The following evidence is not admissible before a hearing panel unless the opposing party has been given, at least ten days before the hearing,

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and

(c) in the case of evidence of a witness, the identity of the witness.

(2) Notwithstanding subsection (1), a hearing panel may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (1) and may make directions it considers necessary to ensure that a party is not prejudiced.

46 (1) No member of a hearing panel holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication, with the exception of communications of which the sole purpose is to make administrative arrangements.

(2) Any member of a hearing panel who is present at a Council meeting at which information is to be presented or discussed that has the potential of becoming a source of review by a hearing panel shall absent himself or herself during the Council's discussions of such matter.

(3) Notwithstanding subsection (2), a majority of the serving members of the Council who have not absented themselves pursuant to subsection (2) constitute a quorum and may transact any business of the Council.

47 Where a hearing panel obtains expert opinion regarding midwifery with respect to a hearing, the hearing panel shall make the nature of the opinion known to the parties and the parties may make submissions with respect to the opinion.

48 (1) Subject to subsection (2), a hearing is open to the public.

(2) The hearing panel may make an order that the public, in whole or in part, be excluded from a hearing or any part of it if the hearing panel is satisfied that

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) the safety of a person may be jeopardized.

(3) Where it thinks fit, the hearing panel may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

(4) No order shall be made pursuant to subsection (3) that prevents the publication of anything that is contained in the Register and available to the public.

(5) The hearing panel may make an order that the public be excluded from the part of a hearing dealing with a motion of an order pursuant to subsection (2).

(6) The hearing panel may make any order necessary to prevent the public disclosure of matters disclosed in the submission relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

(7) Subject to any orders pursuant to this Section, the hearing panel shall state, at the hearing, its reasons for any order made pursuant to this Section.

49 Where a hearing panel makes an order pursuant to subsection 48(2), wholly or partly, because of the desirability of avoiding disclosure of matters in the interest of a person affected,

(a) the hearing panel shall allow the parties, the complainant and their legal and personal representatives; and

(b) the hearing panel may allow such other persons as the panel considers appropriate,

to attend the hearing.

50 A hearing panel shall, on the request of a witness, other than the member, whose testimony is in relation to allegations of misconduct of a sexual nature by a member involving the witness, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness.

51 (1) A hearing panel shall ensure that

(a) the oral evidence is recorded;

(b) copies of the transcript of the hearing are available to a party at the party's request and expense, the complainant at the complainant's request and expense and other persons the hearing panel or the Registrar considers appropriate at those persons' request and expense; and

(c) copies of the transcript of any part of the hearing that is not closed nor the subject of an order prohibiting publication are available to any person at that person's request and expense.

(2) Where a transcript of a part of a hearing that is the subject of an order for a closed hearing or an order prohibiting publication is filed with a court in respect of proceedings, only the court, the parties to the proceedings and the complainant may examine it unless the court or the hearing panel orders otherwise.

52 **(1)** At a hearing of a hearing panel, a member is entitled to all the rights of natural justice, including the right to be represented by legal counsel, to know all the evidence considered by the hearing panel, to present evidence and to cross-examine witnesses.

(2) A hearing panel

(a) shall hear each case in such manner as it deems fit;

(b) may require the member to

(i) submit to physical or mental examinations by such qualified persons as the panel designates,

(ii) submit to an inspection or audit of the member's practice by such qualified persons as the panel designates,

(iii) undergo such examinations as the panel directs to determine whether the member is competent to practise midwifery, and

(iv) produce records and accounts kept with respect to the member's practice;

(c) may, where the member fails to comply with clause (b), resolve that the registration or licence of the member be suspended until the member complies;

(d) shall, where the panel has, pursuant to subclause (b)(i), (ii) or (iii), required a member to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the panel, deliver to the member any report it receives from the designated qualified person;

(e) shall determine whether the member is guilty of charges relating to a disciplinary matter and

(i) where there is a guilty finding, may determine that

(A) the registration or licence of the member be revoked and that the member's name be stricken from the Register,

(B) the licence of the member be suspended

(I) for a fixed period, or

(II) for an indefinite period until the occurrence of some specified future event or until compliance with conditions prescribed by the panel,

(C) conditions, limitations or restrictions be imposed on the licence of the member,

(D) the member undergo such treatment or re-education as the panel considers necessary,

(E) the member be reprimanded, or

(F) such other disposition as it considers appropriate be imposed, or

(ii) where there is a not guilty finding, the hearing panel may dismiss the charges; and

(f) shall file its decision, including reasons, at the offices of the Council.

(3) When making dispositions pursuant to clause (2)(e), the hearing panel may impose one or more of the penalties that are set out therein, or the hearing panel may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(4) The Registrar shall provide the member, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of the hearing panel except that, where there are references identifying clients or other persons other than the complainant, those references as well as other personal information about those persons shall be deleted if, in the Registrar's opinion, it is appropriate.

(5) The decision of a hearing panel has effect immediately upon service on the member or from such time as the decision may direct.

(6) The hearing panel shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined.

53 (1) In this Section, "costs of the Council" include

(a) expenses incurred by the Council, the Registrar and the hearing panel;

(b) honoraria paid to members of the hearing panel; and

(c) solicitor and client costs and disbursements of the Council relating to the investigation and hearing of the complaint.

(2) Where a hearing panel finds a member guilty of charges relating to a disciplinary matter, the hearing panel may order that the member pay the costs of the Council, in whole or in part.

(3) Where a member is ordered to pay costs pursuant to subsection (2), the Council may make it a condition of the registration or licence of the member that such costs be paid forthwith, or at such time and on such terms as the Council may fix.

54 (1) The member complained against may appeal on any point of law from the findings of the hearing panel to the Nova Scotia Court of Appeal.

(2) The notice of appeal shall be served upon the Registrar and the complainant.

(3) The record on appeal from the findings of a hearing panel consists of a copy of the transcript of the proceedings, the decision of the hearing panel and the evidence before the hearing panel certified by the chair of the hearing panel.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply *mutatis mutandis* to appeals to the Nova Scotia Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the Nova Scotia Court of Appeal has jurisdiction to, pending a decision by the Nova Scotia Court of Appeal, grant a stay of any order made pursuant to this Act if, in its discretion, it deems it appropriate.

55 (1) A person whose licence has been revoked by a resolution of a hearing panel pursuant to subclause 52(2)(e)(i), may apply to the Registrar for

(a) the entering of the person's name, address and qualifications on the Register; and

(b) the issuance of a licence.

(2) An application pursuant to subsection (1) shall not be made earlier than

(a) two years after the revocation; and

(b) six months after the previous application.

(3) The Registrar, upon

(a) being satisfied that the interest of the public has been adequately protected;

(b) being satisfied as to the intention of such person to practise midwifery in the Province;

(c) being satisfied as to the activities of such person since the time of the resolution of the hearing panel;

(d) such person producing a letter of good standing from all jurisdictions in which the person has practised midwifery since the date of such resolution of the hearing panel; and

(e) such person undergoing such clinical or other examinations as the Council may designate,

may direct the Registrar to

(f) enter the name, address and qualifications of such person in the Register; and

(g) issue a licence to such person upon such terms and conditions as the Council may direct.

(4) An applicant who is refused registration may appeal that decision to the Registration Appeal Committee pursuant to subsection 19(3).

NOTICES

56 Service of any notice, order, resolution or other document pursuant to this Act or the regulations may be made

(a) upon a midwife or former midwife by registered letter addressed to such person at the person's address as set forth in the Register; or

(b) upon any other person, by registered letter.

57 Where service is made by registered letter, service is deemed to be made on the third day after the notice, order, resolution or other document is mailed and proof that the notice, order, resolution or other document was addressed and posted in accordance with Section 56 is proof of service.

58 Service of any document on the Council may be made by service on the Registrar.

GENERAL

59 (1) A member has a duty to report to the Registrar if the member has reasonable grounds to believe that another member

(a) has engaged in professional misconduct, incompetence or conduct unbecoming the profession; or

(b) is practicing in a manner that otherwise constitutes a danger to the public.

(2) A member has a duty to report to the regulator of another health profession if the member has reasonable grounds to believe that a member of that health profession

(a) has engaged in professional misconduct, incompetence or conduct unbecoming the profession; or

(b) is practicing in a manner that otherwise constitutes a danger to the public.

(3) No action for damages or other relief lies against a member for any report made pursuant to subsection (1) or (2) if such report was made in good faith.

60 (1) No action for damages or other relief lies against the Council, the persons on the Council, committees or subcommittees of the Council, or the persons on the committees or subcommittees, or the officers, agents or employees of the Council for

(a) any act or failure to act, or any proceeding initiated or taken, in good faith under this Act or in carrying out the duties or obligations under this Act; or

(b) any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure is made with malice.

(3) No member of the Council, a committee or subcommittee of the Council or any officer, agent or employee thereof is personally liable for any of the debts or liabilities of the Council unless the person expressly agrees to be liable.

61 Nothing in this Act prohibits the practice by a person of medicine, nursing or pharmacy or any other health discipline recognized by statute.

62 Where a midwife voluntarily renders first aid or emergency services without the expectation of monetary compensation to a person in any place not having proper and necessary medical facilities, the midwife is not liable for the death of such person or damages alleged to have been sustained by such person by reason of an act or omission in the rendering of such first aid or emergency services unless it is established that the injuries were, or the death was caused by, conduct on the part of the midwife that, if committed by a person of ordinary experience, learning and skill, would constitute negligence.

63 **(1)** Every person who

(a) knowingly furnishes false information in any application under this Act or in any statement required to be furnished under this Act or the regulations;

(b) engages in the practice of midwifery without complying with this Act;

(c) engages in the practice of midwifery in violation of any condition or limitation contained in the person's licence; or

(d) otherwise contravenes this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for a term of not more than six months, or to both.

(2) The *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(3) All fines and penalties payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the Council belong to the Council.

(4) Any information to be laid pursuant to this Act or the *Summary Proceedings Act* may be laid by the Council or any person authorized by the Council.

(5) In a prosecution of an offence contrary to this Act or the regulations, the onus to prove that a person accused of an offence has the right to practise midwifery, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(6) Where a violation of this Act or the regulations by a person or employer continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

(7) For the purpose of this Act and the regulations, proof of the performance by a person who is not a registered midwife of one act in the practice of midwifery is sufficient to establish that the person has engaged in the practice of midwifery.

64 **(1)** In the event of a threatened or continuing violation of this Act or the regulations, the Council may apply to a judge for an injunction to restrain the person from continuing or committing the violation and the judge, where the judge deems it to be just, may grant such an injunction.

(2) A judge may, on application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is rea-

son to believe that a person is likely to commit or is continuing to commit a violation of this Act or the regulations.

(3) A judge may make such orders as to costs as the judge considers appropriate in any proceedings pursuant to this Section.

65 The Act comes into force on such day as the Governor in Council orders and declares by proclamation.